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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/590,027	06/07/2000	Steven R. Kleiman	103.1037.01	8740

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NETWORK APPLIANCE/BLAKELY
12400 WILSHIRE BLVD
SEVENTH FLOOR
LOS ANGELES, CA 90025-1030

EXAMINER

NGUYEN, CHAU T

ART UNIT	PAPER NUMBER
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2176

MAIL DATE	DELIVERY MODE
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03/12/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/590,027

Applicant(s)

KLEIMAN, STEVEN R.

Examiner

Chau Nguyen

Art Unit

2176

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 February 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

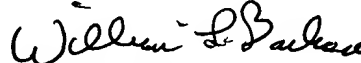
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-8, 10, 12-26 and 28-33.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


**WILLIAM BASHORE
PRIMARY EXAMINER**

Continuation of 11. does NOT place the application in condition for allowance because: In the remarks, Applicant(s) argued that
A) The cited reference do not disclose or suggest a client and a server, each of which includes plural of data buffers of different size (see page 6 of remarks). In reply to argument A, Massa discloses in Fig. 5 and col. 11, lines 10-20 that a data transfer between two applications/devices 132 and 136, and application/device 132 is considered as a server and the application/device 136 is considered as a client. Massa also discloses that the applications/device 132 includes buffers 134, 124 and 140, and the application/device 136 includes buffers 138, 131 and 148, and these buffers may be large or small (col. 11, lines 32-53).

B) There is no disclosure or suggestion in the cited references that the address of a client data buffer for a data transfer is responsive to the size of a data block to be transferred (see page 7 of remarks). In reply to argument B, Massa discloses sending an initial message, which includes the location (address) of the application's set of transmission buffers information to indicate the size of the data to be transferred from the switch 126 of application 136 (client) to the switch 120 of application 132 (server) via message buffers 148 and 125 (data buffers) (col. 12, lines 13-17 and col. 13, lines 31-63).

C) The cited art does not disclose or suggest that the client data buffer and the server data buffer are matched to a size of data blocks to be transferred into or out of the data buffers (see page 9 of remarks). In reply to argument C, Massa discloses the remote switch 126 of the server transfers an amount of data equal (match) to the size of the receiving buffer 134 (client's buffer) from the transmission buffer 138 (server's buffer) into the set of receiving buffers 134 (col. 12, lines 42-59).

In addition, Applicant argued that the examiner makes no attempt whatsoever to rebut the arguments which Applicant submitted in Applicant's last response, filed on 10/27/2006, and the examiner's "Response to Arguments" consists of an essentially verbatim repetition of the reasons stated in the prior Office Action (see page 2 of Remarks). In reply to this argument, since Applicant argued the same arguments that were already addressed in the non-final rejection mailed on 07/27/2006, therefore, the examiner argued back with the same responses in the Final rejection mailed on 01/08/2007.

William F. Bashore
WILLIAM BASHORE
PRIMARY EXAMINER